

Paper No. 101

Filed on behalf of: Yorkey

By: Robert C. Morgan, Esq., Reg. No. 30,199

ROPES & GRAY LLP

1211 Avenue of the Americas

New York, NY 10036-8704

Tel: 212-596-9000

Fax: 212-596-9090

Email: [Robert.Morgan@ropesgray.com](mailto:Robert.Morgan@ropesgray.com)

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

THOMAS J. YORKEY

Junior Party

(Patent 5,645,060),

v.

MOHAMED K. DIAB,  
ESMAIEL KIANI-AZRBAY JANY,  
and WALTER M. WEBER

Senior Party

(Application 09/110,542).

---

Patent Interference No. 105,477 (JL)  
(Technology Center 3700)

---

**YORKEY'S NOTICE OF FILING NOTICE OF APPEAL  
TO THE FEDERAL CIRCUIT**

Pursuant to 37 C.F.R. 41.8(b), Bd. R. 8(b), and to Paragraph 8.3 of the Standing Order, Junior Party Yorkey hereby notifies the Board that an appeal from the Board's Judgment on Priority, Decision on Priority, and Decision on Motions has been taken to the United States Court of Appeals for the Federal Circuit. A copy of the Notice of Appeal is attached.

Respectfully submitted,

July 30, 2008

/Robert C. Morgan #30,199/  
Robert C. Morgan  
ROPES & GRAY LLP  
1211 Avenue of the Americas  
New York, New York 10036-8704  
Tel: (212) 596-9133  
Fax: (212) 596-9090  
Attorney for Junior Party Yorkey

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

THOMAS J. YORKEY, )  
 )  
Appellant )  
 )  
v. )  
 )  
MOHAMED K. DIAB, ESMAIEL )  
KIANI-AZRBAY JANY )  
and WALTER M. WEBER, )  
 )  
Appellees )  
 )  
\_\_\_\_\_ )

RECEIVED  
2008 JUL 28 PM 1:11  
US COURT OF APPEALS  
FEDERAL CIRCUIT

Commissioner for Patents  
United States Patent and Trademark Office  
Alexandria, VA 22313-1450

Dated: July 28, 2008

New York, New York

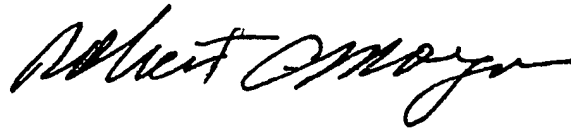
NOTICE OF APPEAL TO THE UNITED STATES  
COURT OF APPEALS FOR THE FEDERAL CIRCUIT  
PATENT INTERFERENCE NO. 105,477 (JL)

Pursuant to 35 U.S.C § 141, Thomas J. Yorkey appeals from the following Judgment and Decisions of the United States Patent and Trademark Office Board of Patent Appeals and Interferences in Patent Interference No. 105,477 (JL).

1. Judgment -- Merits, May 28, 2008, Paper 99, including the judgment on priority as to the subject matter of Count 1 against Yorkey and the cancellation of claim 6 from Yorkey's United States Patent 5,645,060.
2. Decision – Priority, May 28, 2008, Paper 98, including the decision that Yorkey did not prove actual reduction to practice of Count 1 prior to Diab's accorded benefit date of October 6, 1993, and accordingly denying Yorkey's Motion 3 for judgment on the grounds of priority of invention; and

3. Decision on Motions, June 28, 2007, Paper 61, including (a) denial of Yorkey's Motion 1 (lack of written description against Diab's claims 39; and (b) denial of Yorkey's Motion 2, (no interference in fact).

Respectfully submitted,



Dated: July 28, 2008

Robert C. Morgan (Reg. No. 30,199)  
ROPES & GRAY LLP  
1211 Avenue of the Americas  
New York, NY 10036  
Telephone: 212-596-9000  
Facsimile: 212-596-9090  
Email: robert.morgan@ropesgray.com

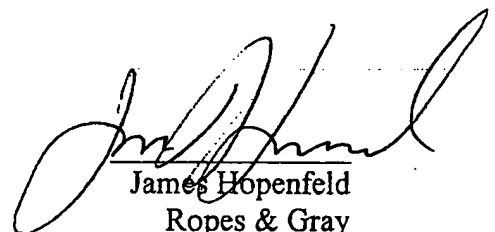
Attorney for Appellant  
Thomas J. Yorkey

Certificate of Service

I, James Hopenfled, declare that on July 28, 2008, I served by first class mail and by e-mail, the attached Notice of Appeal to the United States Court of Appeals for The Federal Circuit, in Patent Interference No. 105,477 (JL) on Counsel for the senior party:

Brenton R. Babcock  
Irfan A. Lateef  
Salima A. Merani  
Jarom D. Kesler  
Knobbe, Martens, Olson & Bear LLP  
2040 Main Street, 14th Floor  
Irvine, California 92614

e-mail: [bbabcock@kmob.com](mailto:bbabcock@kmob.com)



James Hopenfled  
Ropes & Gray  
One Metro Center  
700 12th Street, NW  
Suite 900  
Washington D.C. 20005

DOCKET NO.

002761-0081

PARTIES Thomas J. Yorkey, (Appellant) v. Mohamed K. Diab, Esmail Kiani-Azrbay  
INVOLVED: Jany, and Walter M. Weber, (Appellees)

INTERFERENCE NO: 105,477 (JL)

DECLARED: \_\_\_\_\_

RECEIPT IS HEREBY ACKNOWLEDGED OF THE

Notice of Appeal to the United States Court of  
Appeals for the Federal Circuit Patent Interference No. 105,477 (JL); and  
a Certificate of Service.

DATED July 28, 2008

FILED IN CONNECTION WITH THE ABOVE CASE.

COMMISSIONER FOR PATENTS

VIA HAND DELIVERY